

AMENDED IN SENATE APRIL 13, 2005

SENATE BILL

No. 1003

Introduced by Senator Escutia

February 22, 2005

An act to ~~amend Section 25322~~ add Chapter 6.5 (commencing with Section 25570) to Division 15 of the Public Resources Code, relating to the State Energy Resources Conservation and Development Commission.

LEGISLATIVE COUNSEL'S DIGEST

SB 1003, as amended, Escutia. ~~State Energy Resources Conservation and Development Commission: reports: confidentiality and disclosure.~~ *Energy resources: liquefied natural gas terminals.*

(1) Existing law, until January 1, 1988, authorized the Public Utilities Commission to issue a permit for the construction and operation of a liquefied natural gas terminal pursuant to a prescribed permit procedure.

This bill would enact the Liquefied Natural Gas Evaluation and Terminal Permitting Act. The bill would authorize the State Energy Resources Conservation and Development Commission (energy commission) to establish a permitting process for the construction and operation of liquefied natural gas terminals, as defined.

The bill would provide that a permit may contain conditions necessary or appropriate to ensure the public health, safety, and welfare and other terms and conditions, as provided. The bill would require the energy commission to adopt regulations governing the safety and construction of a terminal, as provided.

(2) The bill would provide that it is to become operative only if SB 426 of the 2005–06 Regular Session is also enacted and becomes operative on or before January 1, 2006.

~~Existing law requires the State Energy Resources Conservation and Development Commission to manage a data collection system for obtaining information necessary to develop specified energy policy reports and analyses and energy shortage contingency planning efforts, and to support other duties of the commission, as prescribed. Existing law requires that the data collection system include specified requirements regarding the confidentiality of the information collected by the commission. Subject to specified confidentiality requirements, existing law authorizes the commission to grant requests for disclosure of records of information collected by the commission for the data collection system.~~

~~This bill would require the commission to grant a disclosure request if disclosure will not result in an unfair competitive disadvantage to the person who submitted the information, unless the public interest served by not disclosing the information clearly outweighs the public interest served by disclosing the information, or unless another applicable provision of law exempts the information from disclosure. The bill would exempt information withheld by the commission from disclosure under the California Public Records Act.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 25322 of the Public Resources Code is~~
- 2 ~~amended to read:~~
- 3 ~~SECTION 1. (a) The Legislature finds and declares all of the~~
- 4 ~~following:~~
- 5 ~~(1) Liquefied natural gas may need to be imported into this~~
- 6 ~~state in order to meet consumer demand for natural gas at~~
- 7 ~~reasonable prices, which would require the construction of one~~
- 8 ~~or more liquefied natural gas terminals and associated~~
- 9 ~~infrastructure.~~
- 10 ~~(2) Several liquefied natural gas terminals have been~~
- 11 ~~proposed to serve natural gas consumers in this state.~~
- 12 ~~(3) It is in the public interest for the state to conduct an~~
- 13 ~~orderly and comprehensive public assessment of the impacts of~~
- 14 ~~the construction and operation of liquefied natural gas terminals~~
- 15 ~~on the economy, consumers, the environment, and public health~~
- 16 ~~and safety.~~

(4) *Public assessment of these impacts is a matter of statewide concern, and existing law reserves authority for that assessment to the state.*

(b) *It is the intent of the Legislature, in enacting this act, to establish clear statutory procedures by which the state may exercise its duties and authority with respect to the assessment and permitting of proposed liquefied natural gas terminals.*

SEC. 2. *Chapter 6.7 (commencing with Section 25570) is added to Division 15 of the Public Resources Code, to read:*

CHAPTER 6.5. LIQUEFIED NATURAL GAS EVALUATION
AND TERMINAL PERMITTING ACT

Article 1. General Provisions

25570. *This chapter shall be known and may be cited as the Liquefied Natural Gas Evaluation and Terminal Permitting Act.*

25570.1. *For purposes of this chapter, the following definitions apply:*

(a) *“Feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account all of the following:*

(1) *Economic, environmental, social, technological, safety, and reliability factors.*

(2) *Gas supply and demand forecasts.*

(3) *Alternative sources of natural gas.*

(b) *“Liquefied natural gas” or “LNG” means natural gas cooled to minus 259 degrees fahrenheit so that it forms a liquid at approximately atmospheric pressure.*

(c) *“Liquefied natural gas terminal,” “terminal,” or “LNG terminal,” means facilities designed to receive liquefied natural gas from ocean-going vessels, including those facilities required for storage and regasification of the liquefied natural gas and those pipelines and facilities necessary for the transmission of the regasified natural gas to the point of interconnection with existing pipelines.*

(d) *“Local government” means a city, county, or city and county, whether chartered or general law, and a district.*

(e) *“Offshore” means a location seaward of the mean high tide line of mainland California, including all islands.*

1 (f) “Onshore” means a location on the mainland of California
2 landward of the mean high tide line.

3 (g) “Permit” means the single authorization provided
4 pursuant to this chapter to construct and operate an LNG
5 terminal in this state.

6 (h) “Person” means an individual, organization, partnership,
7 or other business association or corporation, the federal
8 government, the state government, any local government, and
9 any agency or instrumentality of any of those entities.

10 (i) “State government” means the State of California or an
11 agency, board, commission, or instrumentality thereof.

12 25570.2. A person shall not construct or operate an LNG
13 terminal without obtaining a permit pursuant to this chapter.

14 25570.3. The issuance of a permit by the commission shall be
15 in lieu of all other permits, licenses, certificates, or other
16 entitlements for use required by an agency of state or local
17 government for the construction or operation of an LNG
18 terminal, to the extent permitted by federal statute or regulation
19 or a federal-state agreement relating to water discharge permits.
20 Also, to the extent permitted by federal statute or regulation, the
21 permit shall also be in lieu of all other permits, licenses,
22 certificates, or other entitlements for use issued by an agency,
23 department, or instrumentality of the federal government.

24 25570.4. The commission shall charge each person who
25 applies for a permit pursuant to this chapter a fee, which shall be
26 sufficient to reimburse the commission for the costs incurred in
27 processing the application.

28 25570.5. All state agencies shall cooperate with and, at the
29 request of the commission, shall execute interagency agreements
30 to assist the commission in evaluating a site identified pursuant
31 to Article 2 (commencing with Section 25571). The costs
32 incurred by a state agency as the result of an interagency
33 agreement shall be paid by the commission and shall be
34 reimbursed from fees collected pursuant to Section 25570.4.

35 25570.6. If it is necessary to obtain a lease, easement, or
36 other interest in real property from the State Lands Commission
37 in order to construct and operate a terminal, the lease, easement,
38 or other interest shall be obtained from the State Lands
39 Commission. The Legislature finds and declares that leasing of
40 state lands for the purpose of constructing and operating a

1 terminal approved pursuant to this chapter is in the public
2 interest; and that if that lease is required to construct and
3 operate a terminal, the State Lands Commission shall enter into
4 that lease.

5 25570.7. If any provision of this chapter or the application
6 thereof to any person or circumstances is held invalid, that
7 invalidity shall not affect other provisions or applications of this
8 chapter that can be given effect without the invalid provision or
9 application, and to this end the provisions of this chapter are
10 severable.

11
12 *Article 3. Application for Permit*
13

14 25572. The permit application shall contain the following
15 information:

16 (a) Information, including maps and pictorial and written
17 descriptions of present and proposed development for the site,
18 and relevant geological, archeological, aesthetic, ecological, and
19 seismic marine transport data.

20 (b) A detailed description of the proposed engineering design
21 features, proposed methods of construction, and proposed
22 operating procedures for the terminal, and the proposed plan for
23 marine operations, including shipping routes and control
24 procedures.

25 (c) An analysis of accident possibilities, consequences, and
26 risks for the terminal.

27 (d) Information regarding safety and public protection
28 features, including fire protection measures, marine navigational
29 systems, emergency systems for shutting down the terminal, and
30 other contingency plans for accidents.

31 (e) Information regarding the cost of the terminal, fuel
32 consumption by operating terminal equipment, service life of the
33 terminal, and capacity of the terminal.

34 (f) Information regarding the source of liquefied natural gas,
35 including the contractual terms for the delivery of gas supplies.

36 (g) A description of all proposed or existing natural gas
37 transmission lines related to the proposed terminal, including a
38 map, in suitable scale, of the routing that shows details of the
39 right-of-way in the vicinity of populated or developed areas,
40 parks, and recreational areas; the justification for the route; and

1 *a preliminary statement of the effect of any proposed natural gas*
2 *transmission line on the environment.*

3 *(h) A description of contingency plans for transmitting*
4 *equivalent volumes of natural gas in the event of both short- and*
5 *long-term interruptions of the LNG supply system for the*
6 *proposed terminal.*

7 *(i) A description of the proposed method of financing the*
8 *terminal and analysis of the costs of the terminal on natural gas*
9 *consumers in this state.*

10 *(j) The result of the commission's ranking pursuant to Article*
11 *2 (commencing with Section 25571).*

12 *(k) Any other information that the applicant deems necessary*
13 *or desirable to support its application and better inform the*
14 *commission and the public.*

15 *25572.1. At any time after the filing of the application, the*
16 *commission may require the applicant to furnish additional,*
17 *relevant information as may be necessary to carry out the*
18 *purposes of this chapter.*

19
20 *Article 4. Permit to Construct and Operate an LNG Terminal*
21

22 *25576. The commission shall issue a decision on an*
23 *application for a permit to construct and operate an LNG*
24 *terminal pursuant to this article.*

25 *25576.1. (a) The commission shall not issue a permit for*
26 *construction and operation of a terminal at a site that is not*
27 *evaluated and ranked pursuant to Article 2 (commencing with*
28 *Section 25571).*

29 *(b) If the commission issues a permit, the commission shall*
30 *issue a permit for construction and operation at the site*
31 *designated as the highest ranked site. However, the commission*
32 *may select a lower ranked site if it has determined with respect to*
33 *each higher ranked site that it is not feasible to complete*
34 *construction and commence operations of the terminal at the*
35 *higher ranked site in sufficient time to prevent significant*
36 *curtailment of high priority requirements for natural gas and that*
37 *approval of the lower ranked site will significantly reduce that*
38 *curtailment.*

39 *25576.2. (a) The commission shall not issue a permit for*
40 *construction and operation at any site unless it finds that to do so*

1 *is consistent with the public health, safety, and welfare and may*
2 *impose any conditions on the issuance of a permit that may be*
3 *necessary or appropriate to ensure the public health, safety, and*
4 *welfare.*

5 *(b) Prior to issuing a permit for construction and operation at*
6 *a site, the commission shall review all comments on the site*
7 *submitted by the State Water Resources Control Board, a*
8 *regional water board, or a regional air district.*

9 *25576.3. If the commission issues a permit for construction*
10 *and operation, it shall impose as a condition of the permit each*
11 *term and condition recommended for the selected site pursuant to*
12 *Article 2 (commencing with Section 25571), unless the*
13 *commission first finds with respect to each term or condition any*
14 *of the following:*

15 *(a) Imposition of the term or condition will cause delays in*
16 *commencement of terminal operations that will result in*
17 *significant curtailment of high priority natural gas requirements*
18 *and that deletion or modification of the term or condition will*
19 *avoid or significantly reduce that curtailment.*

20 *(b) The report recommending the term or condition was not*
21 *based on substantial evidence, considering the record as a*
22 *whole.*

23 *(c) Imposition of the term or condition will adversely affect*
24 *public health or safety.*

25 *25576.4. If the commission proposes to issue a permit for the*
26 *construction and operation of a terminal at a site not specified in*
27 *an application submitted pursuant to this chapter, the applicant*
28 *may amend an application to specify that other site.*

29 *25576.5. (a) For the purposes of this chapter, the*
30 *commission shall be the lead agency for the purpose of*
31 *complying with Division 13 (commencing with Section 21000).*

32 *(b) In fulfilling its responsibilities pursuant to Division 13*
33 *(commencing with Section 21000), the commission may, upon*
34 *payment of appropriate consideration, become the successor in*
35 *interest to any local government or entity of state government*
36 *that has any outstanding contract that is germane to the*
37 *commission's responsibilities under this section.*

38 *25576.6. (a) Prior to issuance of a permit to construct and*
39 *operate a terminal, the commission shall hold at least one public*

1 *hearing in the city or county where the terminal is proposed to be*
2 *located.*

3 *(b) To the greatest extent possible, the commission shall*
4 *expeditiously provide information to that city or county and*
5 *cooperate with requests for information to enable the city or*
6 *county to develop and present recommendations in a timely*
7 *fashion.*

8 *(c) The city or county within whose jurisdiction the terminal is*
9 *proposed to be located may hold public hearings on the proposed*
10 *terminal.*

11 *(d) The city or county may make appropriate*
12 *recommendations to the commission, including, but not limited*
13 *to, recommendations regarding safety, protection of the*
14 *environment, and local land use.*

15 *25576.7. (a) The commission shall adopt regulations*
16 *governing the safety and construction of a terminal. In adopting*
17 *these regulations the commission shall consult with the Division*
18 *of Industrial Safety of the Department of Industrial Relations and*
19 *with all other relevant state or federal agencies, for the provision*
20 *of information as the commission may require.*

21 *(b) The commission shall establish a monitoring system to*
22 *ensure that a terminal authorized pursuant to this chapter is*
23 *constructed and operated in compliance with all applicable*
24 *regulations adopted and terms and conditions established*
25 *pursuant to this chapter.*

26 *25576.8. The Public Utilities Commission shall monitor costs*
27 *incurred by a person or entity subject to its regulation in the*
28 *construction, or in the preparation for construction, of a terminal*
29 *subject to this chapter in order to determine if the costs are in the*
30 *best interests of the ratepayers. This monitoring may commence*
31 *prior to the issuance of a permit pursuant to this chapter.*

32 *25576.9. No provision of this article shall be construed to*
33 *abridge or limit in any manner the jurisdiction of the Division of*
34 *Industrial Safety of the Department of Industrial Relations*
35 *conferred pursuant to Division 5 (commencing with Section*
36 *6300) of the Labor Code. Notwithstanding Section 7624 of the*
37 *Labor Code, all matters relating to LNG storage tanks shall be*
38 *within the jurisdiction of the Division of Industrial Safety, except*
39 *for those provisions pertaining to the issuance of permits.*

1 *SEC. 4. This act shall become operative only if SB 426 of the*
2 *2005–06 Regular Session is also enacted and becomes operative*
3 *on or before January 1, 2006.*

4 ~~25322. (a) The data collection system managed pursuant to~~
5 ~~Section 25320 shall include the following requirements regarding~~
6 ~~the confidentiality of the information collected by the~~
7 ~~commission:~~

8 ~~(1) A person required to present information to the~~
9 ~~commission pursuant to this section may request that specific~~
10 ~~information be held in confidence. The commission shall grant~~
11 ~~the request in the following circumstances:~~

12 ~~(A) The information is exempt from disclosure under the~~
13 ~~California Public Records Act, Chapter 3.5 (commencing with~~
14 ~~Section 6250) of Division 7 of Title 1 of the Government Code.~~

15 ~~(B) The information satisfies the confidentiality requirements~~
16 ~~of Article 2 (commencing with Section 2501) of Chapter 7 of~~
17 ~~Division 2 of Title 20 of the California Code of Regulations, as~~
18 ~~those regulations existed on January 1, 2002.~~

19 ~~(C) On the facts of the particular case, the public interest~~
20 ~~served by not disclosing the information clearly outweighs the~~
21 ~~public interest served by disclosure of the information.~~

22 ~~(2) The commission may, by regulation, designate certain~~
23 ~~categories of information as confidential, which removes the~~
24 ~~obligation to request confidentiality for that information.~~

25 ~~(3) Confidential information pertinent to the responsibilities~~
26 ~~of the commission specified in this chapter that is obtained by~~
27 ~~another state agency, or the California Independent System~~
28 ~~Operator or its successor, shall be available to the commission~~
29 ~~and shall be treated in a confidential manner.~~

30 ~~(4) Information presented to or developed by the commission~~
31 ~~and deemed confidential pursuant to this section shall be held in~~
32 ~~confidence by the commission. Confidential information shall be~~
33 ~~aggregated or masked to the extent necessary to assure~~
34 ~~confidentiality if public disclosure of the specific information~~
35 ~~would result in an unfair competitive disadvantage to the person~~
36 ~~supplying the information.~~

37 ~~(b) Requests for records of information shall be handled as~~
38 ~~follows:~~

39 ~~(1) If the commission receives a written request to publicly~~
40 ~~disclose information that is being held in confidence pursuant to~~

1 ~~paragraph (1) or (2) of subdivision (a), the commission shall~~
2 ~~provide the person making the request with written justification~~
3 ~~for the confidential designation and a description of the process~~
4 ~~to seek disclosure.~~

5 ~~(2) If the commission receives a written request to publicly~~
6 ~~disclose a disaggregated or unmasked record of information~~
7 ~~designated as confidential under paragraph (1) or (2) of~~
8 ~~subdivision (a), notice of the request shall be provided to the~~
9 ~~person who submitted the record. Upon receipt of the notice, the~~
10 ~~person who submitted the record may, within five working days~~
11 ~~of receipt of the notice, provide a written justification of the~~
12 ~~claim of confidentiality.~~

13 ~~(3) The commission or its designee shall rule on a request~~
14 ~~made pursuant to paragraph (2) on or before 20 working days~~
15 ~~after its receipt. The commission shall deny the request if the~~
16 ~~disclosure will result in an unfair competitive disadvantage to the~~
17 ~~person who submitted the information. If disclosure will not~~
18 ~~result in an unfair competitive disadvantage to the person who~~
19 ~~submitted the information, the commission shall grant the request~~
20 ~~unless the public interest served by not disclosing the information~~
21 ~~clearly outweighs the public interest served by disclosing the~~
22 ~~information, or unless another applicable provision of law~~
23 ~~exempts the information from disclosure.~~

24 ~~(4) If the commission grants the request pursuant to paragraph~~
25 ~~(3), it shall withhold disclosure for a reasonable amount of time,~~
26 ~~not to exceed 14 working days, to allow the submitter of the~~
27 ~~information to seek judicial review.~~

28 ~~(e) Information submitted to the commission pursuant to this~~
29 ~~section is not confidential if the person submitting the~~
30 ~~information has made it public.~~

31 ~~(d) The commission shall establish, maintain, and use~~
32 ~~appropriate security practices and procedures to ensure that the~~
33 ~~information it has designated as confidential, or received with a~~
34 ~~confidential designation from another government agency, is~~
35 ~~protected against disclosure other than that authorized using the~~
36 ~~procedures in subdivision (b). The commission shall incorporate~~
37 ~~the following elements into its security practices and procedures:~~

38 ~~(1) Commission employees shall sign a confidential data~~
39 ~~disclosure agreement providing for various remedies, including,~~

1 but not limited to, fines and termination for wrongful disclosure
2 of confidential information.

3 ~~(2) Commission employees, or contract employees of the~~
4 ~~commission, shall only have access to confidential information~~
5 ~~when it is appropriate to their job assignments and if they have~~
6 ~~signed a nondisclosure agreement.~~

7 ~~(3) Computer data systems that hold confidential information~~
8 ~~shall include sufficient security measures to protect the data from~~
9 ~~inadvertent or wrongful access by unauthorized commission~~
10 ~~employees and the public.~~

11 ~~(e) Data collected by the commission on petroleum fuels in~~
12 ~~Section 25320 shall be subject to the confidentiality provisions of~~
13 ~~Sections 25364 to 25366, inclusive.~~

14 ~~(f) Information withheld by the commission pursuant to this~~
15 ~~section is not subject to disclosure under the Public Records Act~~
16 ~~(Chapter 3.5 (commencing with Section 6250) of Division 7 of~~
17 ~~Title 1 of the Government Code.~~